

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL KUZMA,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Complaint

1. This is an action under the Freedom of Information Act (hereinafter “FOIA”), 5 USC §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Allison B. Krause and Arthur S. Krause that have been improperly withheld by U. S. Department of Justice (hereinafter “DOJ”) component Federal Bureau of Investigation (hereinafter “FBI”). Allison B. Krause was assassinated by Ohio National Guardsmen at Kent State University on May 4, 1970. Arthur S. Krause was Allison’s father.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC §552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 USC §1331. Venue lies in the district under 5 USC §552(a)(4)(B).

Parties

3. Plaintiff Michael Kuzma is a Buffalo-based attorney who has used FOIA to secure information from various agencies such as the CIA and FBI on topics ranging from the American Indian Movement, Occupy Buffalo, Native American activist and political prisoner, Leonard

Peltier, and Leslie James Pickering, environmentalist, free speech advocate, and a proprietor of Burning Books, a bookstore located in the City of Buffalo.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government and includes component entity FBI. The DOJ is an agency within the meaning of 5 USC §552(f).

FACTS

5. By letters dated April 25, 2016, addressed to the FBI, plaintiff requested copies of all records pertaining to Allison B. Krause and Arthur S. Krause.

6. By letter dated May 6, 2016, the FBI notified plaintiff that it received his request for records concerning Allison B. Krause. See FOIPA Request No. 1349756-000.

7. By letter dated May 9, 2016, the FBI acknowledged receipt of the request plaintiff made for records concerning Arthur S. Krause. See FOIPA Request No. 1349786-000.

8. By letter dated June 22, 2016, the FBI advised plaintiff that his request for records concerning Arthur S. Krause was being closed administratively. Plaintiff was also informed that material responsive to his request would be processed in FOIPA Request No. 1349756-000.

9. Plaintiff filed an administrative appeal letter with the Office of Information Policy (hereinafter "OIP") on January 29, 2019.

10. By letter dated March 1, 2019, OIP provided plaintiff with a letter dated June 30, 2016, which he did not receive, that was purportedly sent to plaintiff by the FBI. In addition, plaintiff was advised that his appeal file was being closed.

11. By letter dated March 11, 2019, plaintiff asked the FBI to reopen his FOIA requests for records concerning Allison B. Krause and Arthur S. Krause. Plaintiff also indicated that he would pay \$520 for CD releases.

12. By letter dated March 18, 2019, the FBI informed plaintiff that his request had been received for processing.

13. By letter dated May 6, 2019, the FBI confirmed a telephone conversation plaintiff had with one of its representatives on May 3, 2019, wherein he was notified that his requests had been placed in the x-large track of the FBI's multi-track backlog of unassigned FOIA requests.

14. By letter dated January 21, 2021, plaintiff filed an administrative appeal with OIP.

15. By letter dated February 9, 2021, OIP advised plaintiff that his administrative appeal dated January 21, 2021, was received on February 5, 2021, and that it had been assigned numbers A-2021-01000 and A-2021-01001.

16. By letter dated April 9, 2021, OIP informed plaintiff that it could not act on his appeal until an adverse determination was made by the FBI on his FOIA requests. A copy of plaintiff's FOIA appeal was sent by OIP to the FBI.

17. Defendant failed to make a determination on plaintiff's administrative appeal as required by 5 USC §552(a)(6)(A)(ii).

18. By letter dated September 12, 2023, the FBI contacted plaintiff to determine if he was still interested in receiving copies of the sought-after records or if he would consider reducing the size of his FOIA requests to under five hundred pages.

19. By letter dated September 21, 2023, plaintiff, among other things, informed the FBI that he would file a lawsuit if all records falling within the scope of his FOIA requests were not released by October 15, 2023. To date, the FBI has not responded to this letter in any manner.

20. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA requests.

21. Plaintiff has a right of prompt access to the requested records under 5 USC §552(a)(3)(A) and the FBI failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after information from plaintiff.

Requested Relief

Wherefore, plaintiff prays that this Court:

1. order defendant to conduct a search for any and all responsive records to plaintiff's requests and demonstrate that it employed search methods likely to lead to the discovery of records responsive to the requests;

2. order defendant to produce, by a date certain, any and all non-exempt records responsive to plaintiff's requests and a Vaughn index of any responsive records withheld under claim of exemption;

3. enjoin defendant from continuing to withhold any and all non-exempt records responsive to plaintiff's requests;

4. grant plaintiff an award of reasonable attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC §552(a)(4)(E)(i); and

5. grant plaintiff such other relief as the Court may deem just and proper.

Dated: December 26, 2023

Respectfully submitted,

s/michael kuzma

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